

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-1308-SB-2004

Date of decision:-10.9.2018

Malkiat Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Kawaljyot Singh, Advocate
for the appellant.

Mr.Dhruv Dayal, Sr.DAG, Punjab.

H.S. MADAAN, J.

This appeal is directed against the judgment and order dated 31.5.2004 passed by learned Additional Sessions Judge, Fast Track Court, Bathinda vide which accused Malkiat Singh was convicted for an offence under Section 376/109 IPC and sentenced to undergo rigorous imprisonment for nine years and to pay a fine of Rs.9,000/- and in default thereof, to further undergo rigorous imprisonment for nine months.

The accused-convict – Malkiat Singh, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per the prosecution

story, are that criminal machinery in this case was set into motion by the complainant (name not being mentioned to conceal her identity and referred to as '*the prosecutrix*') wife of Darshan Singh, resident of Sukhpir Road, Bathinda, who in her statement recorded with the police on 16.4.2002 stated that on the said date at 1:00/1:30 p.m. while she was present in her house, then Malkiat Singh related to her along with Manjit Singh son of Gurdev Singh, resident of Kotkapura entered her house; that Malkiat Singh was carrying a small hammer in his pocket while Manjit Singh was under the influence of liquor; both Malkiat Singh and Manjit Singh came to the court-yard of house of prosecutrix and then Manjit Singh asked Malkiat Singh to fulfil his desire stating that he was sitting in the adjoining room; that Malkiat Singh pushed the complainant in the bed-room and threw her on the bed, giving slaps to her; he loosened the string of the trouser (salwar) of the prosecutrix, pushed it down and then closed the door; he tried to rape her; the complainant/prosecutrix pushed back Malkiat Singh catching hold of his beard and raised an alarm, then he (Malkiat Singh) gave hammer blow on the left side of forehead of prosecutrix with the result, she became unconscious; the prosecutrix stated that she did not know as to what had happened subsequently. According to her, just after one hour, she regained consciousness, tied the string of her salwar, made a call on mobile phone of her husband Darshan Singh, who came and took her to Civil Hospital, Bathinda for treatment. According to the prosecutrix, the motive behind the incident was that her husband Darshan Singh was earlier married with sister of brother-in-law (SANDHU) of accused Malkiat Singh but they had separated, for that

reason Malkiat Singh etc. kept a grudge and accused had entered her house and Malkiat Singh tried to rape her on the instigation of Manjit Singh, causing injuries to her. On the basis of that statement, formal FIR was registered. The matter was investigated. The complainant was got medically examined. The accused were arrested in this case. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Chief Judicial Magistrate, Bathinda.

On presentation of challan in the Court of Chief Judicial Magistrate, Bathinda, he supplied copies of documents relied upon in the challan to both the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 376 IPC is exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Bathinda vide his order dated 12.8.2002 committed the case to the Court of learned Sessions Judge, Bathinda and after that the case was entrusted to the Court of learned Additional Sessions Judge, Bathinda.

Learned Additional Sessions Judge, Bathinda, finding that prima-facie charge for the offence under Sections 452, 376, 109 IPC was disclosed against the accused, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as eight witnesses as per details below:

PW1 Dr.Dheera Gupta, Medical Officer, Civil Hospital, Bathinda, who on 16.4.2002 at 3:50 p.m. had medically examined the

prosecutrix aged about 27 years stated that on general physical examination, a lacerated wound of 3/4 cm x 1/2 cm was found to be present on the front of forehead, swelling around was present and x-ray was advised, further no injury was present on any other part of the body, hymen was absent and as per vaginal examination vagina introduced two fingers without any discomfort; two vaginal swabs were taken and sent to Chemical Examiner for examination of semen. She further stated that she had brought report of Chemical Examiner, which showed presence of semen indicating that intercourse had taken place. She proved copy of MLR of prosecutrix as well as x-ray report stating that probable duration of injuries was within six hours.

PW2, the prosecutrix, did not toe the prosecution story fully. For better understanding and for convenience of reference, the examination-in-chief part of her testimony is reproduced as under:

I was married to Darshan Singh. On 16.4.2002, I was at house. My husband had gone to office. At about 1:30 p.m. Malkiat Singh who is present in Court and one another persons with muffled face came in my house. Malkiat Singh was having hammer, the other man was seen to be in drunkard condition. The person who was accompanied Malkiat Singh, asked Malkiat Singh to fulfil his desire and he was sitting in the adjoining room. Malkiat Singh put his hand on my mouth and he pushed me on the bed and started giving fist blows to me and he opened the string of my salwar and get it down. I pushed the accused and I also caught his beard

to save myself. The accused Malkiat Singh then hit a hammer on my forehead and I became unconscious. After one hour, I remained conscious. My salwar was smeared with semen. I tied the string of my salwar. From this, I understand that I was raped by Malkiat Singh. I informed my husband Darhsan Singh on mobile and told him and he came at about 2:30 p.m. and took me to Civil Hospital, Bathinda, where I was medically examined. My salwar, kamij and Dupatta were taken into possession by the doctor. My husband was previously married with Harjinder Kaur, sister of Sandhu of Malkiat Singh accused. No child was born to her, and he got my marriage solemnized with Darshan Singh. Subsequently, differences cropped with Darshan Singh and Harjinder Kaur. Due to this reason, Malkiat Singh has raped me. Malkiat Singh is my "Massar" from my relation. My statement Ex.PE has recorded by the police, which was read over and explained to me and I signed the same. The accused who was with muffled face is not present in the Court. I named Manjit Singh on suspicion in my statement Ex.PE.

PW3 Darhsan Singh stated that on 16.4.2002, he had gone to his office at 9:00 a.m., whereas his wife, the prosecutrix, was at home; at about 2:30 a.m. his wife informed him on mobile phone that Malkiat Singh had committed rape upon her and an other person was also accompanying Malkiat Singh, that fellow was having a muffled face; as

such he reached house and found that his wife was having injuries on forehead, then he took her to Civil Hospital, Bathinda and got her admitted there. She was medically examined. The police came to the hospital and recorded her statement. He stated that Malkiat Singh accused is SANDHU of his brother-in-law besides being related to the prosecutrix as maternal uncle (Massad).

PW4 ASI Gurdeep Singh stated that on 16.4.2002 while posted as Incharge Police Post, Railway Colony, Bathinda, he had received wireless message to collect ruqa from Civil Hospital, Bathinda. He accordingly did so and went to Civil Hospital, Bathinda, moving application there seeking medical opinion regarding fitness of prosecutrix to make statement and accordingly receiving the opinion in positive proceeded to record her statement. Thereafter, he put his endorsement below such statement and sent ruqa to police station, on the basis of which formal FIR was recorded. He stated that he had recorded statement of Darshan Singh also and a parcel sealed with the seal of Dr.Dheera Gupta containing clothes of prosecutrix and two sealed vials containing vaginal swabs were taken into police possession vide a memo. He further deposed regarding arrest of accused Manjit Singh on 17.4.2002. He stated that accused Malkiat Singh was arrested on 18.4.2002, who was got medically examined on that very day.

PW5 Dr.Kasturi Lal, EMO, Civil Hospital, Bathinda stated that on 18.4.2002, he had medically examined Malkiat Singh, resident of Naruana brought by ASI Gurdeep Singh and had found that there was nothing to suggest that Malkiat Singh was unable to perform sex. There

was no injury mark on the penis. He proved report given by him in that regard as Ex.PM.

PW6 C-I, Ajit Singh stated that on 17.4.2002, he was posted at Police Post Railway under P.S. Kotwali. Being a formal witness, he submitted his affidavit as Ex.PM.

PW7 HC Joginder Singh stated that on 16.4.2002, he was posted as AMHC, Malkhana, PS Kotwali, Bathinda and on that day ASI Gurdeep Singh deposited with him one parcel containing clothes sealed with seal of doctor, two vials which were also sealed with seal of doctor along with one envelope sealed with seven seals of doctor along with sample seal and on 17.4.2002, he had handed over such articles to Constable Ajit Singh to deposit the same in the office of Chemical Examiner, Patiala and such Constable after doing the needful handed over receipt to him. He stated that he did not tamper with the seals and did not allow anybody else to do so.

PW8 Inspector Mohinder Kumar, who on 2.7.2002, after the investigation of the case was entrusted to him, had recorded statements of witnesses, had gone to the place of occurrence preparing the site plan testified in that regard. He further deposed regarding, what he had done in connection with the investigation of the case stating that on completion of investigation challan against the accused was prepared and filed by Inspector Desraj.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against

them were put to them, but they denied the allegations contending that they are innocent and have been falsely implicated in this case.

Further accused Malkiat Singh took up a plea that PW Darshan Singh was earlier married to Rajwinder Kaur; that said Rajwinder Kaur is his wife's sister's husband's sister; that later on Darshan Singh contracted a second marriage with the complainant, without obtaining divorce from Rajwinder Kaur; that the complainant is sister-in-law of Malkiat Singh i.e. her husband Darshan Singh and Manjit Singh are cousin brothers i.e. Darshan Singh is the son of mother's sister of Manjit Singh; that on the day of occurrence, they have gone to get the compromise effected between Rajwinder Kaur and Darshan Singh, so that he might part with some part of his property in favour of Rajwinder Kaur; that during the conversations, heated words were exchanged and in the course of that altercation, the complainant caught hold of his beard and in order to save himself, he pushed her back, as a result of which, her forehead dashed against a wall; that nothing else took place as described by the complainant and her husband; that he has been falsely involved in this case so that he may not help Rajwinder Kaur to get her share from the property of Darshan Singh; that the complainant is daughter of his wife's sister.

Further, accused Manjit Singh took up a plea that he never accompanied Malkiat Singh to the house of the complainant on the alleged day of occurrence and it was another Manjit Singh.

Accused Manjit Singh did not lead any evidence in defence.

However, accused Malkiat Singh examined Tejinder Singh as DW1 in his

evidence, who supported the defence version stating that about two years back, Manjit Singh son of Gurdev Singh and Malkiat Singh accused were sent to the house of Darshan Singh for the purpose of compromise between his sister Rajinder Kaur and Darshan Singh; that later on he came to know that an altercation took place during the conversation with the complainant and Malkiat Singh and when the complainant tried to pull the beard of Malkiat Singh, he pushed her back, as a result of which she suffered injury. Learned defence counsel tendered into evidence certified copy of summoning order dated 18.1.2003 Ex.DB and certified copy of the application order dated 3.5.2004. Ex.DA.

After hearing arguments, Additional Sessions Judge, Fast Track Court, Bathinda acquitted accused Manjit Singh, whereas accused Malkiat Singh was convicted and sentenced as mentioned supra, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant-accused-convict and learned Sr.DAG, Punjab besides going through the record.

The cardinal principles of criminal jurisprudence are that the prosecution must prove its charge against the accused beyond a shadow of reasonable doubt. Such onus to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The accused is not expected to prove his defence with some exactness and rigor, with which the prosecution is required to prove guilt of the accused. The accused is required to render only a reasonable and plausible explanation, which may cast a doubt in the mind about the truthfulness of the prosecution story. Furthermore, as per our jurisprudence, hundreds of guilty persons

may go scot-free but even one innocent should not be punished.

No doubt in a rape case conviction of an accused can be based upon sole testimony of the victim but the said deposition should be blemish free inspiring confidence. Here, I find that, the deposition of the prosecutrix does not measure up to that standard. She, while getting her statement recorded as PW2 did not support the prosecution story with regard to Manjit Singh trespassing in her house or getting her raped by Malkiat Singh, rather she stated that Malkiat Singh accompanied by another person with a muffled face came to her house. She did not say that the said person was Manjit Singh, whereas in her statement to the police, she had specifically named the said person as Manjit Singh, nowhere stating that he was having a muffled face, that means she tried to save Manjit Singh from punishment. Such type of witness thus loses her credibility since if she can suppress and conceal a fact to save a culprit from punishment, then she can tell lies to frame other person so as to get him convicted. Another thing to be noticed is that according to PW2 the prosecutrix, Malkiat Singh put his hand on her mouth, pushed her on the bed and started giving fist blows to her and in addition to that Malkiat Singh had hit her with a hammer on her forehead with the result, she became unconscious and she regained consciousness after about one hour, whereas the medical opinion does not corroborate her such contentions. PW1 Dr.Dheera Gupta, who had medically examined the prosecutrix on 16.4.2002 at about 3:50 p.m. had noticed a lacerated wound 3/4 cm x 1/2 cm on front of forehead without observing any other injury. In her cross-examination, she stated that the injury found on forehead of prosecutrix is

not such type of nature that the injured would become unconscious at any stage. Therefore, the contention of prosecutrix that she had become unconscious for one hour does not appear to be plausible and satisfactory. The doctor in her cross-examination had stated that the possibility of injury No.1 by striking the forehead against wall cannot be ruled out. She further stated that there was no mark of violence on the person of prosecutrix except injury No.1. Therefore, her deposition that Malkiat Singh put his hand on her mouth and pushed her on the bed and started giving fist blows to her and he opened the string of her salwar got it down and then she pushed the accused and also caught his beard to save herself do not come out to be plausible.

PW2 the prosecutrix did not utter even a single word that Malkiat Singh had forcible sexual intercourse with her. She rather stated that after being hit on forehead with a hammer by Malkiat Singh, she become unconscious and after about one hour when she regained consciousness, her salwar was smeared with semen, she tied the string of her salwar and from that she understood that she was raped by Malkiat Singh. This means that she is just drawing assumptions and presumptions and the crucial evidence that Malkiat Singh had forcible sexual intercourse with the prosecutrix is clearly missing in this case. Malkiat Singh, a maternal uncle of prosecutrix in relations committing rape upon the prosecutrix due to Darshan Singh getting married with her while Darshan Singh was previously married with sister of SANDHU of Malkiat Singh, the motive suggested for the incident does not seem to be much convincing. The prosecutrix is not shown to have raised any hue

and cry. The reason given by her in her cross-examination is that it was for the reason that Malkiat Singh had shut her mouth with his hand does not come out to be plausible. She further stated that when she regained consciousness, accused was not present at the spot. If it was so, then how could she blame Malkiat Singh for her rape.

PW3 Darshan Singh is admittedly not an eye-witness of the incident. Therefore, his testimony is not of much value.

The prosecution failed to prove its charge against the accused beyond a shadow of reasonable doubt but the trial Court by misappraisal of evidence and misinterpretation of law wrongly convicted the accused for the offence under Section 376/109 IPC. No proper reasoning has been given while coming to the conclusion that charge for offence under Section 376 IPC stood proved against the accused Malkiat Singh.

Thus, I find that the judgment of conviction and order of sentence passed by the Court below are not sustainable. The same are set aside by way of acceptance of this appeal. The appellant is acquitted of the charge for which he has been held guilty and convicted vide the impugned judgment.

The appellant, who is stated to be in custody is ordered to be released forthwith, if not required in any other case.

Necessary intimation be sent to the quarter concerned.

10.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No